IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2692 of 1999
And
SPECIAL CIVIL APPLICATION NO 5601 OF 1999
With
CIVIL APPLICATION NO. 2957 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEGHA SYNTETICS THROUGH PARTNER

Versus

GUJARAT STATE FINANCIAL CORPORATION

Appearance:
MR GM AMIN for Petitioner in SCA 2692 of 1999
MR SI NANAVATI FOR NANAVATI & NANAVATI for Petitioner in SCA 5601 of 1999
MR BHARAT T RAO for Respondent GSFC

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 27/12/2000

C A V JUDGEMENT

1. These two Special Civil Applications being Special Civil Application No. 2692 of 1999 and Special Civil Application No. 5601 of 1999 with Civil Application No. 2957 of 2000 are disposed of by this Common Judgment & Order.

2. In Special Civil Application No. 2692 of 1999 the petitioner seeks a direction for setting aside the sale conducted in pursuance of a notice issued under section 29 of the State Financial Corporation Act, and also a direction not to hand over possession of the factory of the petitioner situated at 115 GIDC, National Highway No.8, Himmatnagar. In Special Civil Application No. 5601 of 1999, the petitioner seeks for a direction for setting aside the order by which the Gujarat State Financial Corporation accepted the offer and denied to accept the money from the petitioner for purchase of the property of the petitioner of Special Civil Application No. 2692 of 1999.

3. The petitioner M/s Megha Synthetics of Special Civil Application No. 2692 of 1999 applied for loan from the respondent Gujarat State Financial Corporation (GSFC) to the tune of Rs.15-00 lacs. Upto 25-11-1998 petitioner repaid the loan of Rs.14,36,095-00. Petitioner received notice issued under section 29 of the SFC Act on 8-9-1998 and on 17-11-1998 GSFC took possession of the property of the petitioner. Petitioner requested for re-schedulement of the loan amount and has also paid a sum of Rs.69,000-00 by demand draft and two post dated cheques of Rs.62,600-00 each, which were handed over to the GSFC. However the cheques were not entertained by the Bank. The GSFC thereafter issued another notice on 29-1-1999, which was received by the petitioner on 4-2-1999. The respondent GSFC published notice for auction of petitioner's property on 4-2-1999, on which date the notice of GSFC was received by the petitioner. The petitioner requested respondent GSFC for sale of machinery only and not the entire property of the petitioner. It is also contended that, by sale of the machinery sufficient funds could be raised and which alone can meet the amount to be repaid. This was not accepted by the GSFC and the entire property was proposed to be sold by the GSFC.

4. The petitioner of Special Civil Application No. 5601 of 1999 being the only bidder offered a sum of Rs.7.25 lacs and the said petitioner being the highest tenderer, the GSFC agreed to sell the property to the

said petitioner. The petitioner as per terms of the sale deposited a sum of Rs.2.54 lacs, including earnest money deposit within 30 days from the date of sale and it has been agreed that the said petitioner shall pay the remaining Rs.4.71 lacs within a period of 18 months in six quarterly installments commencing from 1-5-1999 with interest at the rate of 18 % per annum. The petitioner made some delay, for which Rs.12,000-00 penal interest was realised from the petitioner by GSFC. However the petitioner ultimately paid the entire consideration money to the GSFC.

5. The petitioner of Special Civil Application No. 2692 of 1999 M/s. Megha Synthetics challenged the action of the respondent Corporation for sale of its property on the ground that the sale has been conducted by not following the conditions laid down by the Supreme Court in Mahesh Chandra's case. The petitioner has paid not only the entire dues but has also deposited some excess amount to the GSFC for which they are entitled to get refund from the Corporation. During pendency of the case GSFC accepted the money from the petitioner and therefore the petitioner of Special Civil Application No. 2692 of 1999 sought for redemption of the mortgage by quashing the sale conducted by the respondent GSFC. The petitioner of Special Civil Application No. 5601 of 1999 on the other hand urged that, since the petitioner is a bona fide purchaser and satisfied all the terms and conditions of the agreement he is entitled to the possession of the property.

6. During the course of arguments Mr. S.I. Nanavati, learned Sr. Counsel appearing on behalf of petitioner in Special Civil Application No. 5601 of 1999 very fairly submitted that, the petitioner does not want to continue with the litigation, since the GSFC has failed to hand over possession of the property immediately after the sale. The petitioner has demanded his amount as the litigation may take considerable long time and there may be huge delay in getting possession of the property. Mr. Nanavati accordingly submitted that, if the petitioner of Special Civil Application No. 2692 of 1999 is agreeable to withdraw the suit, and if the GSFC refunds the principal money with interest from the date of payment till the date of repayment at 18 % interest. The proposal was considered by the respondent GSFC. Learned counsel for GSFC has further submitted that the sale of the property of the petitioner of Special Civil Application No. 2692 of 1999 - M/s. Megha Synthetics to the petitioner of Special Civil Application No. 5601 of 1999 has been cancelled by the GSFC on the

ground that some misinformation were furnished by the petitioner of Special Civil Application No. 5601 of 1999 and along with cancelation of the sale GSFC has sent back the money to the said petitioner by a cheque. The cheque was however not accepted by the said petitioner as the petitioner thought that the GSFC is under an obligation to hand over possession to him and accordingly returned the cheque to the GSFC. Mr. Nanavati, learned counsel appearing on behalf of the petitioner in Special Civil Application No. 5601 of 1999 submitted that his client has returned the cheque to the GSFC and the money was with the GSFC in the Bank and they have earned the amount towards interest as the money was not withdrawn from the Bank. Mr. Nanavati accordingly submitted that, since the respondent GSFC has earned good amount towards interest from the unpaid cheque amount, GSFC should returned the principal amount with interest that have been earned by the Corporation during pendency of the case. Mr. B.T. Rao, learned counsel appearing on behalf of the GSFC submitted that the GSFC shall refund the principal amount to the petitioner with 11 % interest for a period of six months. It is submitted by Mr. B.T. Rao that, it is true that the petitioner of Special Civil Application No. 5601 of 1999 did not accept the money but the GSFC also did not keep the money in the Bank as they have to reinvest in industries. Therefore, Mr. Rao submitted that the non withdrawal of the money through cheque did not benefit the GSFC much and in fact if any interest is accrued, that may be very negligible amount. Consequently Mr. Rao has submitted that the GSFC has agreed to pay six months interest to the petitioner along with the principal amount paid to the GSFC. Mr. Nanavati, even though initially argued for claim of 18 % interest, however reduced his claim at 11 percent, which is the Reserve Bank rate. Mr. Nanavati however claimed interest for 12 months, but ultimately he left the period to be decided by this Court.

7. It appears that the sale conducted by the GSFC was cancelled and the petitioner of Special Civil Application No. 5601 of 1999 was informed about cancellation of the sale and the GSFC has also returned money to the petitioner by a cheque. When the cheque has been refused by the petitioner on the alleged ground of pendency of the writ petition before this Court, I am of the view that, he should not claim interest from the date of repayment of the money by cheque by the GSFC. Further I have also considered submissions of Mr. Nanavati. It is also true, when the cheque amount has not been drawn and is returned to the GSFC, the money was in the name of the GSFC lying in the Bank, and therefore this amount

must have accrued a sizable interest and if the said interest is not paid to the petitioner, then the respondent GSFC will be benefitted out of the money of the petitioner. Therefore, I am of the view that the petitioner should get the interest on his principal amount. The question that has been left to the Court is, for how long the respondent GSFC shall pay the interest. The claim of the petitioner of Special Civil Application No. 5601 of 1999 is initially for 12 months which has been reduced by learned counsel for the petitioner to 10 months. On the other hand GSFC has agreed to pay interest at the rate of 11 % for a period of six months only. Since the matter has been amicably discussed between the parties and it has been left to the Court to decide, which may be just and reasonable for both the parties. Having regard to the facts and circumstances of the case, and after considering the submission of learned counsel of both the parties, I am of the view that, respondent GSFC should return the principal amount to the petitioner of Special Civil Application No. 5601 of 1999 with interest at the rate of 11 % per annum for a period of 9 months. It is made clear that the penal interest of Rs.12,000-00 realised by the respondent GSFC from the said petitioner shall be refunded without any interest. I make it clear that, I am not awarding interest on the said amount of Rs.12,000-00 on the ground that the said amount has been paid by the petitioner for his default. The GSFC shall work out the interest on the principal amount to be paid to the petitioner at the rate of 11 % and shall make the payment to the petitioner within one month from the date of receipt of this order. Special Civil Application No. 5601 of 1999 is disposed of accordingly.

8. As regards Special Civil Application No. 2692 of 1999 it appears that the GSFC did not follow the guidelines issued by the Apex Court in Mahesh Chandra's case. However, it appears that the GSFC has accepted all the dues from this petitioner. In view of the fact that the guidelines issued by the Apex Court has not been followed while conducting the sale, I am of the view, said transaction is to be quashed and accordingly the sale conducted by respondent GSFC in regard to the prayer of petitioner of Special Civil Application No. 2692 of 1999 is hereby set aside. Respondent GSFC is directed to hand over possession of the Megha Synthetics - the petitioner of Special Civil Application No. 2692 of 1999, within a period of two weeks from the date of receipt of this order. This petition is accordingly allowed.

9. Both the petitions are accordingly disposed of. Rule is made absolute to the extent each of the petitions are allowed. I make no order as to costs.

10. In view of disposal of petitions, no separate order is passed in Civil Application No.2957 of 2000 and this civil application is disposed of.

Dt:27-12-2000 (P.K. Sarkar, J)

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